

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

United States of America,

Plaintiff,

Case No. 13-20882

v.

Judith E. Levy

United States District Judge

Aaron Goldfein,

Mag. Judge David R. Grand

Defendant.

_____/

**ORDER DENYING DEFENDANT'S MOTION FOR
RECONSIDERATION [276]**

On May 11, 2020, the Court denied without prejudice Defendant's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (ECF No. 273.) Defendant's primary argument was that diabetes is a top comorbidity for COVID-19, and at blood sugar level 6.4 as of 2018, Defendant was .1 level away from being "officially" diabetic. (*See* ECF No. 274, PageID.2866.)

The Court denied Defendant's motion because his conditions of "typical hypertension and prediabetes at this time [we]re not listed as comorbidities" to COVID-19. (ECF No. 274, PageID.2869.)

Acknowledging that scientific understanding of the “pandemic is changing every day,” the Court encouraged Defendant to submit a renewed compassionate release motion “should his medical conditions change or should he present evidence demonstrating that his existing conditions significantly increase his likelihood of a dire outcome from COVID-19 while confined.” (*Id.* at PageID.2869-2870; ECF No. 273, PageID.2839.)

On June 17, 2020, Defendant filed a motion to reconsider the denial. (ECF No. 276.) Defendant claims that, since the denial of his motion in early May, he and his attorney have been attempting to obtain a blood sugar test to determine whether Defendant is now diabetic. (*See id.* at PageID.2877.) According to Defendant, the Bureau of Prisons has refused these requests. (*See id.*)

Defendant’s motion for reconsideration is DENIED because it is untimely. *Zammit v. Internal Rev. Serv.*, No. 16-2703, 2017 WL 6276122, at *2 (6th Cir. June 30, 2017) (quoting E.D. Mich. L.R. 7.1(h)(1)) (Motions for reconsideration “must be filed within 14 days after entry of the judgment or order.”). However, the Court is disturbed to hear that the Bureau of Prisons has denied Defendant a blood sugar test. Defendant’s

medical records indicate that he received a “diabetic exam” in March 2020, but Defendant testified that BOP did not test his blood sugar during this exam. (ECF No. 274, PageID.2853.) If Defendant was .1 level away from a diabetic blood sugar level in 2018, it is entirely possible that he has now passed that tenth of a threshold and is currently a full-blown diabetic. The CDC has highlighted diabetes as a major aggravating risk factor for a dire outcome from contracting COVID-19. *People Who Are at Higher Risk for Severe Illness* (last reviewed June 17, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

If BOP continues to deny Defendant the basic medical care of ensuring that a prediabetic man receives regular blood sugar tests, the Court would entertain this fact as evidence that Defendant’s current medical conditions, coupled with BOP’s unwillingness to provide him with appropriate medical care, “substantially diminish” Defendant’s ability “to provide self-care within the environment of a correctional facility.” U.S.S.G. § 1B1.13 n.1(A). After all, Defendant may very well have full-blown, untreated diabetes and may be in a significantly

different position from when he first brought his motion for compassionate release.

Regardless of whether Defendant receives appropriate testing, the Court's May 11 Order left Defendant free to file a renewed motion for compassionate release. If such a motion is filed, the Court's first inquiry will be whether Defendant has received a recent A1C blood sugar test.

IT IS SO ORDERED.

Dated: June 18, 2020
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 18, 2020.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager